

Date: 04/06/10

JURY SELECTION
Standard Voir Dire of Jurors

UNITED STATES OF AMERICA,
Plaintiff,

v.

Criminal No. 07-0298
**ELECTRONICALLY
FILED**

DAVID CUNNINGHAM,
Defendant.

JUDGE: Instruct Deputy to swear the jury panel

DEPUTY: SWEAR the jury panel

JUDGE: Explain to the jury panel the following:

Federal Court vs. State Court

Civil vs. Criminal

Time commitment

Jury service is an important function of the administration of justice;

Someday you or a relative of yours may be involved with a case and wish to have a fair case.

Explain that the purpose of the voir dire examination is:

To enable court to determine whether any prospective juror should be dismissed for cause;

Date: 04/06/10

To enable counsel for the parties to exercise their individual judgment with respect to peremptory challenges, that is, challenges for which counsel need not give a reason.

Inquire of the panel if anyone has just cause to be excused from serving as a juror (written or otherwise).

Any challenge to the panel as a whole?

DEPUTY: Inform the jurors of the logistics of voir dire and the jury selection process in the courtroom.
Inform the jurors of the following (as a group):

The Judge will begin voir dire by asking you a series of questions as a group. After all of you have been questioned, 32 of you will be called forward to be asked a series of questions individually. From this panel of 32 jurors, the strike process will begin. The removed jurors will be replaced and the newly seated jurors will be individually questioned until our jury is seated. Before the Judge can proceed with the first round of questions, I need to provide you with the following information.

1. The name and address of each of the parties.

PROSECUTION:

UNITED STATES OF AMERICA
in the Western District of Pennsylvania

DEFENDANT:

DAVID CUNNINGHAM

Date: 04/06/10

2. Name and law firm of each counsel.

For the Government appears:

SOO C. SONG, Assistant United States Attorney for the
United States Attorney's Office
Located in this building

For the Defendant appears:

LINDA COHN of the Federal Public Defender's'Office located
on Liberty Avenue in the Liberty Center
Pittsburgh, PA

3. The nature of this trial.

The superseding indictment charges the defendant, David Cunningham, with three counts. Count 1 alleges that he received child pornography from June 2007 until on or about July 17, 2007. Count 2 alleges that he possessed child pornography on or about July 19, 2007. Count 3 alleges that he distributed child pornography on or about June 19, 2007.

Mr. Cunningham states that he is not guilty of any of these offenses.

4. The caption of the case.

United States of America v. David Cunningham 07-298

Date: 04/06/10

JUDGE: Ask the following questions of the jurors (as a group)(if any answer would cause you embarrassment or lack of candor, please ask to meet with the Court privately at side bar with counsel):

1. Do you know the defendant?
2. Do you know either of the attorneys in this case? Have they or their firms ever represented you or any members of your immediate family?
3. Do you know anything about this case, other than what you heard this morning?
4. A few minutes ago you were provided a list of witnesses who may or may not be called to testify during this trial. Please take a moment and review the names on the list...Do you know any of these witnesses?
5. Are you or any member of your immediate family employed by the federal government (with the exception of military service)?
6. Are you or any member of your immediate family employed by any law enforcement agency?
7. Do you have any difficulty accepting the legal concept that the government is required by law to prove a defendant guilty beyond a reasonable doubt of the exact offenses charged in the indictment, and if the government fails to meet the burden of proving each and every element of the offenses charged beyond a reasonable doubt, you must find the defendant not guilty?

Date: 04/06/10

8. Do you have any difficulty accepting the legal concept that the defendant does not have to testify at trial, and that nothing can be inferred from his not doing so?
9. Do you have any difficulty accepting the legal concept that although the defendant has been charged with a crime by the United States, that fact does not mean that he is guilty of that crime; and that right now he is innocent, despite the fact that he has been accused in an indictment?
10. In this case some of the evidence and testimony will be presented by the United States, that is the prosecution, and some of the evidence and testimony will be presented on behalf of the defendant. Do you have any difficulty accepting the legal concept that you should not believe the evidence and testimony presented on behalf of the United States over the evidence and testimony presented on behalf of the defendant merely because the United States is the prosecution and the defendant is accused of having committed certain crimes?
11. Do you or any member of your immediate family belong to any group or organization which is primarily concerned with issues and concerns related to the rights of victims?
12. Do you have strong feelings about the criminal justice system or the prosecution of criminal cases that would affect your ability to render a fair and impartial verdict in this case?
13. This case is being prosecuted following an investigation by law enforcement officials that includes the PA State Police, FBI, U S Department of Justice, and the U S Attorney's Office. Do you have any strong feelings about law enforcement that would affect your ability to render a fair and impartial verdict in this case?

Date: 04/06/10

14. This case involves an accusation that the defendant received, possessed, and distributed child pornography. During this trial, you will be shown child pornography, including graphic images, and hear descriptions of computer files, including graphic and offensive file names which will certainly be disturbing to most, if not all of you. Regardless of your feelings on this subject matter and the graphic nature of the material presented, are you unable to render a fair and impartial verdict based solely on the evidence presented in court and the Court's instructions on the law?

DEPUTY: Call 32 jurors forward from the Judge's Jury List - Voir dire will begin with the following 32 jurors.

JUDGE: Any challenge to the 32 jurors as a whole?

I will now be asking questions on an individual basis. Again, if you would prefer to answer the question in private, let me know and I will accommodate your request.

Ask the following questions of the 32 potential jurors:

1. What is your present occupation?
2. Who is your employer?
3. If you are retired, who was your last employer and what was your occupation?
4. Are you married? If so, what is your spouse's occupation and who is your spouse's employer?
5. Do you have any children? Do any of them work in the Western District of Pennsylvania? For whom do they work and

Date: 04/06/10

what do they do?

6. Have you or any member of your immediate family ever been a witness or defendant in a criminal case, or been arrested or charged with a crime?
7. Have you or any member of your immediate family ever been the victim of a crime?
8. Have you or any member of your immediate family ever served on a jury before?
9. Do you understand that the testimony of a law enforcement officer is not entitled to special weight over the testimony of the defendant or any other witness merely because he or she is a law enforcement officer?
10. Have you or any member of your immediate family ever been affected by the enforcement of child pornography laws, obscenity laws, or the laws that govern and criminalize the sexual exploitation of children?
11. Do you have beliefs about privacy or free speech that would make it difficult for you to convict a person for possessing material that depicts minors engaged in sexually explicit conduct?
12. Do you have any views related to computers, the internet or technology that would make it difficult for you to consider forensic evidence or testimony about online activity?
13. Do you understand that you must determine whether the government has proven its case beyond a reasonable doubt?
14. Each juror must decide the case for him or herself and only be guided by fellow jurors in terms of reasonable argument,

Date: 04/06/10

discussions and review during deliberations. Do you understand that you may not vote for a guilty verdict unless you are personally convinced that the defendant is guilty beyond a reasonable doubt?

15. Will you be able to stand up for your beliefs even if the other eleven jurors vote the other way?
16. Do you understand that you are to decide this case solely on the evidence presented in this courtroom and that you are to follow the law as instructed by the Court? Do you agree to do so?

JUDGE: Address any requests by counsel for follow-up questions.

Address any challenges for cause

If a ruling has been made to excuse a juror(s) based on challenge for cause:

JUDGE: Court is to direct Deputy to replace the excused juror(s).

Court will then conduct individual voir dire on the newly seated juror(s).

Address any requests by counsel for follow-up questions as to the newly seated juror(s).

Address any challenges for cause

JUDGE: Voir dire is complete. 32 potential jurors have been seated.

Any challenge to the current 32 potential jurors as a whole before the commencement of the strike process?

Date: 04/06/10

BREAK for 10 minutes to allow counsel time to prepare for the strike process.

Strike process occurs

JUDGE: Direct Deputy to seat the jury.

DEPUTY: Formally seats 12 person jury and 2 alternate jurors.

JUDGE: Excuse unused jurors. Direct them to return to Jury Office on the 3rd floor for further instructions as to their jury service.

Court directs Deputy to SWEAR the jurors.

DEPUTY: SWEAR the jurors.

JUDGE: Ask counsel if there is anything that they would like to place on the record prior to administering the Preliminary Charge to the jury.

Read Preliminary Charge.

JUDGE: At first break - direct the jurors to the jury room to receive basic juror instructions from the Deputy Clerk.